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 12 UNITED STATES OF AMERICA

FILED

AUG 19 2008

CLERK, U.S. DISTRICT COURT  
 SOUTHERN DISTRICT OF CALIFORNIA  
 BY  DEPUTY

13 UNITED STATES DISTRICT COURT  
 14 SOUTHERN DISTRICT OF CALIFORNIA

15 UNITED STATES OF AMERICA,	)	Case No. 08CR1276-H
16 Plaintiff,	)	<b>STIPULATION OF FACT AND JOINT</b>
17 v.	)	<b>MOTION FOR RELEASE OF</b>
18 MELVIN ALFARO-ZUNIGA,	)	<b>MATERIAL WITNESS(ES) AND</b>
19 Defendant.	)	<b><u>ORDER THEREON</u></b>

20 **IT IS HEREBY STIPULATED AND AGREED** between the plaintiff, UNITED STATES  
 21 OF AMERICA, by and through its counsel, Karen P. Hewitt, United States Attorney, and Christina  
 22 M. McCall, Assistant United States Attorney, and defendant MELVIN ALFARO-ZUNIGA, by and  
 23 through and with the advice and consent of defense counsel, Joseph M. McMullen, Esq., that:

24 1. Defendant agrees to execute this stipulation on or before the change-of-plea hearing  
 25 date and to participate in a full and complete inquiry by the Court into whether defendant knowingly,  
 26 intelligently and voluntarily entered into it. Defendant agrees further to plead guilty to counts 2 of  
 27 the Indictment charging defendant with a non-mandatory minimum count of Transportation of Illegal  
 28 Aliens and Aiding and Abetting, in violation of 8 U.S.C. § 1324(a)(1)(A)(ii) and (v)(II).

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1           2. Defendant acknowledges receipt of a plea agreement in this case and agrees to  
2 provide the signed, original plea agreement to the Government prior to the disposition date set by  
3 the Court.

4           3. The material witnesses, Sergio De La Crus-Cervantes, Andres Vizcaino-Galarza, and  
5 Diego Mora-Ricon, in this case:

6           a. Are aliens with no lawful right to enter or remain in the United States;  
7           b. Were each paying, or having others pay on their behalf, \$2,500 to others in  
8 order to be brought into the United States illegally and/or transported illegally to their destination  
9 therein;

10           c. After illegally crossing the border into the United States, stayed overnight in  
11 a house in the United States;

12           d. On April 1, 2008, were loaded along with 17 other illegal aliens into a trailer,  
13 and then driven towards Los Angeles, the aliens' intended destination;

14           e. May be released and remanded immediately to the Department of Homeland  
15 Security for return to their country of origin.

16           4. After the material witnesses are ordered released by the Court pursuant to this  
17 stipulation and joint motion, if defendant does not plead guilty to the charge set forth above, for any  
18 reason, or thereafter withdraws his guilty plea to that charge, defendant agrees that in any proceeding,  
19 including, but not limited to, motion hearings, trial, sentencing, appeal or collateral attack, that:

20           a. The stipulated facts set forth above shall be admitted as substantive evidence;  
21           b. The United States may elicit hearsay testimony from arresting agents  
22 regarding any statements made by the material witness(es) provided in discovery, and such testimony  
23 shall be admitted as substantive evidence under Fed. R. Evid. 804(b)(3) as statements against interest  
24 of (an) unavailable witness(es); and,

25           c. Understanding that under Crawford v. Washington, 541 U.S. 36 (2004),  
26 "testimonial" hearsay statements are not admissible against a defendant unless defendant confronted  
27 and cross-examined the witness(es) who made the "testimonial" hearsay statements, defendant

1 waives the right to confront and cross-examine the material witness(es) in this case.

2 5. By signing this stipulation and joint motion, defendant certifies that defendant has  
3 read it (or that it has been read to defendant in defendant's native language). Defendant certifies  
4 further that defendant has discussed the terms of this stipulation and joint motion with defense  
5 counsel and fully understands its meaning and effect.

6 Based on the foregoing, the parties jointly move the stipulation into evidence and for the  
7 immediate release and remand of the above-named material witness(es) to the Department of  
8 Homeland Security for return to their country of origin.

9 It is STIPULATED AND AGREED this date.

10 Respectfully submitted,

11 KAREN P. HEWITT  
12 United States Attorney

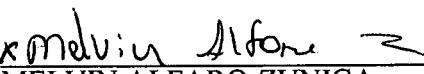
13 Dated: 8-19-08.

  
14 CHRISTINA M. McCALL  
15 Assistant United States Attorney

16 Dated: 8-17-2008.

  
17 JOSEPH M. McMULLEN  
18 Defense Counsel for Melvin Alfaro-Zuniga

19 Dated: 08-17-08.

  
20 MELVIN ALFARO-ZUNIGA  
21 Defendant

## ORDER

Upon joint application and motion of the parties, and for good cause shown,  
**THE STIPULATION** is admitted into evidence, and,  
**IT IS ORDERED** that the above-named material witness(es) be released and remanded  
forthwith to the Department of Homeland Security for return to their country of origin.

SO ORDERED.

Dated: 8/19/08

*Barbara L. Major*  
United States Magistrate Judge

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28 | Stipulation of Fact and Joint Motion for Release of  
Material Witness(es) And Order Thereon in  
United States v. Melvin Alfaro-Zuniga